

IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: **Timothy Landin Rodriguez v David A Merchant**

Docket No. **295752**

L.C. No. **06-000316-NM**

William B. Murphy, Chief Judge, acting under MCR 7.211(E)(2), orders:

The motion to strike appellees' motion for sanctions for vexatious proceedings is DENIED.

The motion for sanctions for vexatious proceedings is GRANTED because this appeal was undertaken "without any reasonable basis for belief that there was a meritorious issue to be determined on appeal." MCR 7.216(C)(1)(a). Appellants could not possibly have had any reasonable basis to believe that the trial court erred in denying their motion for relief from judgment based on a claim of newly discovered evidence where the trial court's November 9, 2009 order denying the motion made plain that the alleged newly discovered evidence had actually been presented to the trial court *prior* to the order granting summary disposition from which appellants sought relief.

This case is REMANDED to the trial court for a determination and award of actual damages incurred by appellees because of this vexatious appeal. MCR 7.216(C)(2). While the Court declines to take other disciplinary action at this time, appellants are admonished that further vexatious filings in this Court related to the matter underlying this litigation may result in more stringent sanctions. See MCR 7.216(C)(1).



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 23 2010

Date

Sandra Schultz Mengel
Chief Clerk